

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1324 of 1982

with

CROSS OBJECTIONS

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GSRTC

Versus

RAMGAURI RAMDAS

Appearance:

1. First Appeal No. 1324 of 1982
MR MD PANDYA for Petitioner No. 1
MR MANOJ N POPAT for Respondent No. 1-6
MR RAJNI H MEHTA for Respondent No. 10
Respondents No. 7, 8 and 9 served.
-

CORAM: ACTING CHIEF JUSTICE MR JN BHATT

and

MR. JUSTICE A.L. DAVE

Date of decision: /07/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This appeal under Section 110-D of the Motor Vehicles Act, 1939, is preferred to challenge the judgment and award passed by the Motor Accident Claims Tribunal, Junagadh, in Motor Accident Claim Petition No.228 of 1980, on March 8, 1982.

2. The respondents in the appeal have filed Cross Objections in the First Appeal. The appeal and the cross objections are, therefore, heard and decided, simultaneously, by this judgment.

3. The appellant was respondent No.2 (owner of bus involved in accident) in the original Claim Petition preferred by respondents No.1 to 6. Respondents No.7 and 8 are the drivers of the vehicles involved in the accident and respondent No.9 is the owner and respondent No.10 is the insurer of the taxi involved in the accident with the bus in question. The cross objections are preferred by the original claimants (respondents No.1 to 5 and 7) in the original petition before the Tribunal.

4. The accident in question occurred on September 2, 1980, when Ramdas Parmanand, husband of original claimant No.1 was travelling in taxi car No. GTW 2084 for going to Somnath from Vanthali. At about 2.45 P.M., when the vehicle was about to reach Veraval, the accident occurred. S.T. Bus bearing No.GRS 7263 was going ahead of the taxi. When they were about to reach a bridge, the driver of the taxi tried to overtake the bus and, in the process, the taxi dashed against the hind portion of the bus and then it deflected towards right and dashed against the parapet wall of the bridge. In the mishap, the deceased succumbed to the injuries while under treatment, at Veraval hospital.

5. Respondent No.1 is the widow of the deceased, respondent No.2 is the mother of the deceased and respondents No.3 and 4 are the daughters of the deceased. They had claimed Rs.1,40,000/- by way compensation from the driver, owner and insurer of the vehicles in question.

5.1 The opponents contested the claim and filed their written statement, broadly, denying the averments made in the claim petition and further denying the negligence on the part of the respective drivers. The insurance company took a contention that its liability was limited only to Rs.10,000/-, as the deceased was a passenger in the vehicle.

6. Considering the evidence led by the parties, the Tribunal came to a conclusion that the liability of the opponents was joint and several to pay the compensation and the amount of compensation was worked out to Rs.73,000/- under various heads. The Tribunal ordered to pay interest at the rate of 6% per annum from the date of application till realisation and dismissed the rest of the claim. The Tribunal also upheld the contention of the insurance company about its limited liability to the extent of Rs.10,000/- and observed that the liability of the insurance company is joint and several along with the liability of the owner and the driver to the extent of Rs.10,000/-.

7. Aggrieved by the said judgment and order, the S.T. Corporation has preferred this appeal. The contention is regarding the quantum of compensation, the negligence aspect and on the non-apportionment of liability inter se between two sets of opponents, namely, the driver, owner and the insurer of the taxi and the driver, owner of the S.T Bus.

8. Learned Advocate, Mr. Pandya, appearing for the appellant, submitted that the Tribunal has not appreciated the evidence of the driver of the S.T. Bus in its correct perspective. He submitted that the Tribunal has committed an error of law in not apportioning the liability inter se between the two vehicles. He also submitted that the award is inflated.

9. The cross objections preferred by the original claimants are supported by learned Advocate, Mr. Popat. It is contended that the income of the deceased has been underestimated. Possibility and potentiation of future expansion of business and prospective rise in income has not been taken into consideration and, therefore, the cross objections may be allowed.

10. We have examined the record and proceedings from the angles suggested by the learned Advocates for the parties before us. So far as negligence part is concerned, we find that the version of the claimants about the driver of the bus signalling permission to the taxi driver to overtake has remained unchallenged. The cross-examination mainly spins around the quantum part. About non-mentioning of the S.T. driver signalling the permission to taxi driver to overtake the bus, claimant-Ramaben said that she was disturbed and, therefore, she may not have so stated in her statement before the police. So far as witness-Nainchandra Damodar

(Ex.29) is concerned, his version regarding the S.T. driver having signalled has remained uncontroverted.

10.1 The driver of the bus has come with a different story. That a vehicle was coming from opposite direction on the bridge, which signalled for priority by putting on the lights and he, therefore, slowed down the bus. At that time, the taxi came from behind and dashed against the hind portion of the bus and, therefore, got deflected and dashed against the parapet wall of the bridge.

11. We are in total agreement with the appreciation of evidence by the Tribunal when the Tribunal observed that, if the version given by the S.T. driver was correct, the taxi would have dashed against the oncoming vehicle. When a person is in charge of a large vehicle like bus, he owes greater degree of duty, care and caution. It is expected of him to anticipate the unanticipated. Petitioners' witness No.2-Navinchandra has, in terms, stated that driver of the bus signalled permission to overtake and because there was a narrow bridge ahead, the accident occurred. The driver of the bus ought to have realised before signalling that he is approaching a narrow bridge where passage of two vehicles is not possible. The knowledge and consciousness about this aspect is reflected from his deposition as well, but still he has signalled the vehicle to overtake and, therefore, it cannot be said that he had not contributed anything to the cause of the accident simply because the taxi came from behind. Similarly, the driver of the tax also, before trying to overtake the bus, ought to have realised that the bridge is narrow and overtaking is not possible. The Tribunal has appreciated all these aspects and has, ultimately, held that both the drivers were responsible for the accident.

12. So far as apportionment part is concerned, vis-a-vis the claimants, it would be a case of composite negligence and, therefore, the finding of the Tribunal requires no interference at our hand.

13. So far as quantum part is concerned, the deceased was a qualified Pharmacist and was running a medicine shop. Extracts of books of accounts were produced to indicate that his net income for S.Y. 2035 to be 9899.39. For S.Y. 2036, copy of profit and loss account is produced at Ex.48, which indicates a profit of Rs.11,832.58 ps. for a period of ten months. The Tribunal, therefore, assessed his income at Rs.14,000/annually. The Tribunal has also considered deposition of applicant No.1 that she was being paid

Rs.800 to 1000/- per month for household expenses and accepted that figure at Rs.1000/-. Considering the age of the deceased at 47 years and the age of applicant No.1 at 41 years, the Tribunal adopted a purchase of 10 years and awarded an amount of Rs.21,800/- as future economic loss. For applicant No.2, it was assessed at Rs.4800/-, by adopting a multiplier of 2 years. The same amount was awarded for applicant No.3. So far as applicant No.4 is concerned, the Tribunal assessed dependency loss at Rs.2400/- per year and took a purchase of four years and awarded Rs.9600/- towards future economic loss, totalling an amount of Rs.48,000/- as compensation to the claimants under the head of future economic loss.

13.1 It was contended that the business was run by the deceased with the help of employees. It was contended before the Tribunal as well as before us that only the remuneration paid to qualified employees should be considered as economic loss. We are not able to accept this contention for the reason that the say of applicant No.1 is that the income from business is reduced to half. It is also to be considered that the deceased was running the shop for 25 years and had developed the business. He would have further developed the business. Such development, ordinarily, cannot be expected by employing employees. The say of the applicant is that the income is reduced to half and that the business has weakened has remained uncontroverted. Considering the likelihood of future expansion at the hands of the deceased, considering the reduction in income, on his demise and considering the additional salary that was required to be paid by the applicant to a qualified pharmacist, in our opinion, the economic loss ought to have been considered at a higher scale by the Tribunal. The enhancement in the economic loss considering the above aspects can reasonably be accepted at Rs.3000/- per annum and continuing to adopt the multiplier adopted by the Tribunal, an additional amount of Rs.30000/-, by way of compensation, is required to be paid to applicant No.1 to meet the ends of justice. For this purpose, the Cross Objections will have to be accepted to that extent.

14. We, therefore, find no merit in the appeal and the appeal is dismissed. Cross Objections are partly accepted and the appellant and respondents No.7, 8 and 9 are ordered to pay an additional amount of compensation of Rs.30,000/- with proportionate costs and interest at the same rate as awarded by the Tribunal on awarded amount, from the date of application till realisation to respondent No.1 herein-original claimant Rama Gauri Ramdas.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

gt